

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

DAVID THOMAS,
Plaintiff,

Case No. 1:13-cv-053
Spiegel, J.
Litkovitz, M.J.

vs.

GARY STILTNER, et al.,
Defendants.

**REPORT AND
RECOMMENDATION**

Plaintiff David Thomas filed this civil action through counsel on January 26, 2013. (Doc. 1). On March 28, 2014, plaintiff's counsel filed a motion to withdraw as attorney for plaintiff. (Doc. 32). The Court set the motion for a hearing and instructed plaintiff's counsel to serve a copy of the Order on plaintiff by certified mail with return receipt requested and to provide written notice of completion of service to the Court. (Doc. 33). Counsel filed written notice of service to the Court prior to the hearing but was unable to provide a return receipt as counsel had not received one. (Doc. 34).

A hearing on the motion to withdraw was held on April 17, 2014, at which plaintiff's counsel appeared in person and counsel for defendants appeared by telephone. (Doc. 35). Plaintiff failed to appear at the hearing. The Court issued an Order that same date granting the motion to withdraw, granting plaintiff 30 days within which to secure new counsel or proceed on his own pro se, and ordering plaintiff to notify the Court in writing by May 19, 2014, whether he would proceed through counsel or pro se. (Doc. 36). The Court directed the Clerk of Court to serve plaintiff with a copy of the Order by certified and regular mail. The Order sent by certified mail was returned marked "unclaimed" and "unable to forward." (Doc. 37).

To date, plaintiff has failed to respond to the Court's April 17, 2014 Order to notify the Court in writing by May 19, 2014, whether he will proceed through counsel or pro se in this action. Plaintiff's failure to respond to the Court's Order warrants dismissal of this case pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute. *See Jourdan v. Jabe*, 951 F.2d 108, 109-10 (6th Cir. 1991). District courts have this power to dismiss civil actions for want of prosecution to "manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Link v. Wabash R.R.*, 370 U.S. 626, 630-631 (1962). *See also Jourdan*, 951 F.2d at 109.

IT IS THEREFORE RECOMMENDED THAT:

1. Plaintiff's complaint be **DISMISSED** with prejudice pursuant to Fed. R. Civ. P. 41(b).
2. The Motion to Quash Plaintiff's December 4, 2013 Subpoena (Doc. 19) be **DENIED** as moot.

Date: _____

6/13/14


Karen L. Litkovitz, Magistrate Judge
United States District Court

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

DAVID THOMAS,
Plaintiff,

Case No. 1:13-cv-053
Spiegel, J.
Litkovitz, M.J.

vs.

GARY STILTNER, et al.,
Defendants.

NOTICE

Pursuant to Fed. R. Civ. P. 72(b), WITHIN 14 DAYS after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. This period may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring on the record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon, or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections WITHIN 14 DAYS after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. See *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

David Thomas
2200 Earl Ave
Columbus, Ohio 43211

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☒ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number

(Transfer from service label)

7011 3500 0001 5345 5741

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540